

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRUCE TONEY,

Plaintiff,

v.

Case No. 05-CV-74249-DT

CITY OF DETROIT et al.,

Defendants.

**ORDER DENYING MOTION TO EXTEND SUMMONS,
DISMISSING DEFENDANTS BARBIERI AND MELENDEZ,
AND SETTING DATES FOR DISCOVERY, STATUS CONFERENCE AND TRIAL**

Pending before the court is Plaintiff Bruce Toney's "Ex Parte Motion to Extend Summons and for Alternate Service on Defendants Barbieri and Melendez," filed on March 20, 2006. Defendant City of Detroit filed a response to the motion on March 22, 2006, and no reply has been filed within the proscribed time. See E.D. Mich. LR 7.1(d)(2)(C). Having reviewed the briefs, the court concludes a hearing is unnecessary. E.D. Mich. LR 7.1(e)(2).¹ The court will deny the motion. Specifically, the court finds that Plaintiff has not shown "good cause" to extend the time for serving Defendants in this case. See Fed. R. Civ. P. 4(m). The court is not persuaded that the submitted affidavits establish that Plaintiff is entitled to either an extension of time or for an order allowing alternate service. It does not appear that the process servers exhausted their efforts to find and serve the individual defendants, nor does it appear that Plaintiff timely moved for an extension of time. Moreover, Plaintiff indicates that the statute of

¹The court did, however, conduct an off-the-record telephone conference on March 23, 2006, during which time the court afforded the parties a limited opportunity to present their positions on the pending motion.

limitations is not scheduled to expire until the end of 2006 or early 2007, (see Pl.'s Mot. at ¶ 1), and the court can discern no prejudice in denying this motion. Accordingly, Plaintiff's motion will be denied and Defendants Barbieri and Melendez will be dismissed from this action without prejudice.

Moreover, the court conducted an off-the-record telephone conference on March 23, 2006, during which the parties informed the court of the status of their discovery efforts. The parties noted that they would need 40-60 additional days of discovery and that, following discovery, the equitable issues relating to Defendant's "release" defense will likely be resolved by dispositive motion, a motion for judgment on the papers, or a limited bench trial. The court will impose an appropriate schedule. Accordingly,

IT IS ORDERED that Plaintiff's "Ex Parte Motion to Extend Summons and for Alternate Service on Defendants Barbieri and Melendez" is DENIED and Defendants Barbieri and Melendez are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the parties shall conclude their targeted discovery, as explained in the court's March 10, 2006 Order, by **May 15, 2006**. The court will conduct an on-the-record status conference on **May 22, 2006 at 2:00 p.m.**, at which time the court will discuss the timing of any dispositive motions or motions for judgment. If such motions are not filed, the court will conduct a limited bench trial on the threshold issues noted in the March 10, 2006 order on **June 26, 2006 at 9:00 a.m.**

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 5, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 5, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522